

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 STEVEN KINFORD,

4 Plaintiff,

5 v.

6 SHANNON MOYAL, et al.,

7 Defendants.

Case No. 2:18-cv-01890-RFB-EJY

**ORDER**

8 Before the Court is Plaintiff Steven Kinford's ("Plaintiff") Motion for Reconsideration  
9 ("Motion") (ECF No. 118) and Request for an I-File Review ("Request") (ECF No. 119).  
10 Defendant filed an Opposition to Plaintiff's Motion for Reconsideration ("Opposition") (ECF No.  
11 120). No response to Plaintiff's Request (ECF No. 118) was filed by Defendant.

12 **I. Motion for Reconsideration**

13 Plaintiff moves for the Court to reconsider the Court's prior Order (ECF No. 99) denying  
14 Plaintiff's Motion for Appointment of Counsel (ECF No. 94). Plaintiff states that the purpose of  
15 the Motion is to "try and show this court that in fact the Plaintiff could use assistance with his  
16 case." ECF No. 118 at 1.

17 A. Background

18 Plaintiff is a *pro se* inmate proceeding *in forma pauperis* bringing constitutional claims  
19 under 42 U.S.C. § 1983. After screening Plaintiff's claims according to 28 U.S.C. § 1915, the  
20 Court permitted Plaintiff's Eighth Amendment failure to protect claim to proceed against  
21 Defendants Moyle and against John Doe 1 and Jane Doe 2 when Plaintiff learned their identities.  
22 ECF No. 15 at 7. The Court also permitted Plaintiff's Eighth Amendment deliberate indifference  
23 to serious medical needs to proceed against John Doe 3 when Plaintiff learned his identity. *Id.*

24 B. Legal Standards

25 Ninth Circuit precedent and the Local Rules of Practice of the District of Nevada provides  
26 that the Court "possesses the inherent power to reconsider an interlocutory order for cause, so long  
27 as the court retains jurisdiction." United States District Court for the District of Nevada Local  
28 Rule 59-1; *see also Petrarca v. Aranas*, Case No. 2:15-cv-001231-RFB-CWH, 2016 WL 884638,

1 at \*1 (D. Nev. Mar. 7, 2016) (citing *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254  
2 F.3d 882, 885 (9th Cir. 2001)). Local Rule 59-1, and prior Ninth Circuit cases, also provide that  
3 reconsideration may generally be appropriate if “(1) there is newly discovered evidence that was  
4 not available when the original motion or response was filed, (2) the court committed clear error  
5 or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling  
6 law.” LR 59-1; *S.E.C. v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1100 (9th Cir. 2010). As  
7 this Court has previously stated, “[a] motion for reconsideration is not an avenue to relitigate the  
8 same issues and arguments upon which the court already has ruled.” *Petrarca*, 2016 WL 884638,  
9 at \*1 (internal quotation marks omitted) (quoting *In re AgriBioTech, Inc.*, 319 B.R. 207, 209 (D.  
10 Nev. 2004)).

11 A *pro se* litigant does not have a constitutional right to appointed counsel upon filing a 42  
12 U.S.C. § 1983 civil rights claim. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).  
13 Instead, the Court “may request an attorney to represent any person unable to afford counsel.” 28  
14 U.S.C. § 1915(e)(1). When considering the potential appointment of counsel for an indigent *pro*  
15 *se* plaintiff, the Court must consider whether there are “exceptional circumstances” warranting  
16 such an appointment. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). The Ninth Circuit  
17 employs a two-prong test to determine whether exceptional circumstances are present. *Terrell v.*  
18 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). The Court must evaluate the “likelihood of success  
19 on the merits and the ability of the petitioner to articulate his claims *pro se* in light of the  
20 complexity of the legal issues involved.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1311  
21 (9th Cir. 1986)). “Neither of these factors is dispositive and both must be viewed together before  
22 reaching a decision on [a] request [for] counsel.” *Wilborn*, 789 F.2d at 1331. The circumstances  
23 in which a court will grant a *pro se* plaintiff’s request for counsel in a civil rights action, however,  
24 are “exceedingly rare,” and a court will grant such a request under “only extraordinary  
25 circumstances.” *Anderson v. Nevada*, Case No. 3:16-cv-00056-RCJ-WGC, 2017 WL 11479417,  
26 at \*1 (D. Nev. Nov. 22, 2017) (citing *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800  
27 (9th Cir. 1986); *Wilborn*, 789 F.2d at 1331).

1 C. Discussion

2 Applying the first prong of the *Terrell* test above, it is still true that Plaintiff may ultimately  
3 prevail on his Eighth Amendment claims. However, turning to the second prong of the test,  
4 Plaintiff relies on arguments similar to those he made in his original Motion for Appointment of  
5 Counsel (ECF No. 94). Plaintiff states that he “does not fully understand what is being presented  
6 to both him and the court.” ECF No. 118 at 2. As evidence of his inability to comprehend court  
7 proceedings, Plaintiff also submitted the results of a previous mental evaluation. *Id.* The  
8 evaluation, the results of which are attached to the Motion, gave Plaintiff a Global Assessment of  
9 Functioning (“GAF”) score of 40. *Id.* at 9. According to the GAF score scale submitted by  
10 Plaintiff, this score indicates that Plaintiff has “some impairment in reality testing or  
11 communication . . . OR major impairment in several areas, such as work or school, family relations,  
12 judgment, thinking, or mood.” *Id.* at 11. The date of the attached report is July 7, 2008, long  
13 before this action was originally filed in September 2018. *Id.* at 9. While Plaintiff has not  
14 submitted this document previously, it does not reveal any intervening change in Plaintiff’s ability  
15 to litigate his case. In fact, Plaintiff’s Motion includes no newly discovered evidence that warrants  
16 appointment of counsel. While the Court understands that Plaintiff has had no formal training in  
17 law, a lack of adequate legal knowledge is not an exceptional circumstance warranting the  
18 appointment of counsel. *Zamaro v. Moonga*, 656 Fed. App’x 297, 299 (9th Cir. 2016).

19 As noted by the Court, the second prong of the *Terrell* factors weighs against appointment  
20 of counsel since Plaintiff has had no problem articulating his claims. ECF No. 99 at 2. Plaintiff’s  
21 Eighth Amendment failure to protect and deliberate indifference to serious medical needs claims  
22 are not legally complex. *Id.* at 3; *Warren v. Nev. Dep’t of Corrs.*, Case No. 3:17-cv-00228-MMD-  
23 WGC, 2020 WL 5044136, at \*2 (D. Nev. Aug. 25, 2020) (Eighth Amendment failure to protect  
24 claim insufficiently complex to warrant appointment of counsel); *Bacon v. Cox*, Case No. 2:18-  
25 cv-00319-JAD-NJK, 2019 WL 8013764, at \*1 (D. Nev. Feb. 28, 2019) (Eighth Amendment  
26 deliberate indifference to serious medical needs claim insufficiently complex to warrant an  
27 appointment of counsel).

1 Since Plaintiff's Motion does not: (1) establish any change in circumstances; (2) introduce  
2 newly discovered evidence that alters the Court's analysis; (3) establish clear error by this Court;  
3 or (4) present a change in the law that would warrant reconsideration of the Court's prior order,  
4 Plaintiff's Motion for Reconsideration (ECF No. 118) is denied.

## 5 **II. Request for an I-File Review**

6 Plaintiff requests an opportunity to review information contained in his I-File (institutional  
7 file) to best prepare for trial. ECF No. 119 at 1. Plaintiff also states that he believes that the  
8 prison's administrative regulations allow an inmate to view their I-File once per year. *Id.* Plaintiff  
9 states that he is concerned that certain information would be taken out of the I-File and therefore  
10 requests access to an unredacted version of his file. *Id.*

11 Plaintiff is correct that the Nevada Department of Corrections ("NDOC") administrative  
12 regulations allow an inmate to review his or her I-File. NDOC Administrative Regulation ("AR")  
13 568 provides that NDOC "will allow an inmate to review their respective institutional file (I-File)  
14 for the purpose of challenging the accuracy or completeness of certain non-confidential  
15 information contained therein." NDOC AR 568.01. AR 568 also provides that "Associate  
16 Wardens and institutional/facility caseworkers will maintain the appropriate request form, DOC-  
17 2022, Request for Review of Institutional File, to ensure that these forms are accessible." NDOC  
18 AR 568.03. The regulation provides that an "inmate will only be permitted to review their I-File  
19 records once in a 12-month period, except under unique and special circumstances such as viewing  
20 the record prior to a . . . judicial hearing." NDOC AR 568.06.

21 Plaintiff's Request for an I-File Review did not mention any attempt to pursue a review of  
22 his I-File through the established regulations. While Plaintiff mentions his concern about  
23 redactions to his I-File, he does not explain why a review of an unredacted version is necessary in  
24 order for him to prepare for trial. AR 568 does place limits on inmate access to their I-File, stating  
25 that inmates will not be allowed to access information which might "endanger the well-being of  
26 the subject or other persons", "endanger the security" of the institution or any other facility housing  
27 inmates, "disclose personal or confidential information" of any person other than the subject, or  
28 "impede, hinder or compromise an investigation or the outcome of criminal or administrative

proceedings” engaged in by NDOC. NDOC AR 568.02. In addition, “Pre-Sentence Investigation (PSI) reports are excluded from reproduction, along with any other confidential documents.” *Id.*

Since Plaintiff has not shown that he has exhausted the administrative procedure that allows an inmate to review his I-File, and has not established why it would be necessary for him to review an unredacted version of his I-File, the Court will deny Plaintiff’s Request without prejudice. The Court recommends that Plaintiff complete DOC-2022: Request for Review of an Institutional File to seek review of his I-File. If Plaintiff is unable to secure sufficient review of his I-File through the established administrative procedure, Plaintiff may renew his request to this Court.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Reconsideration (ECF No. 118) is DENIED.

IT IS FURTHER ORDERED that Plaintiff’s Request for an I-File Review (ECF No. 119) is DENIED without prejudice.

DATED this 9th day of July, 2021.

  
ELAYNA J. YOUCHAH  
UNITED STATES MAGISTRATE JUDGE